

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ROGER WAYNE DALY,

Defendant and Appellant.

F078500

(Super. Ct. No. F07902652)

**OPINION**

**THE COURT\***

APPEAL from an order of the Superior Court of Fresno County. Jonathan B. Conklin, Judge.

Michael L. Pinkerton, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Eric L. Christoffersen and Ivan P. Marrs, Deputy Attorneys General, for Plaintiff and Respondent.

-ooOoo-

---

\* Before Levy, Acting P.J., Detjen, J. and DeSantos, J.

Appellant Roger Wayne Daly appeals from the trial court's denial of his petition<sup>1</sup> to reduce to a misdemeanor his 2007 conviction for possession of a stolen vehicle (Pen. Code, § 496d, subd. (a)).<sup>2</sup> In December 2019, we issued an opinion affirming the trial court's denial. (*People v. Daly* (Dec. 10, 2019, F078500) [nonpub. opn.].) On June 24, 2020, however, the California Supreme Court remanded this matter back to this court with directions to vacate our prior decision and reconsider the cause in light of *People v. Orozco* (2020) 9 Cal.5th 111 (*Orozco*).

Although the parties were given an opportunity to file supplemental briefs, neither party did so. On July 13, 2020, we vacated our prior decision. After reviewing *Orozco*, we again affirm the trial court's denial of appellant's petition.

### **FACTS**

On May 1, 2007, appellant pleaded guilty to receiving a stolen vehicle, a felony.

On October 15, 2018, appellant filed a petition for reduction of his felony conviction pursuant to section 1170.18, asking the court to reduce his 2007 receiving a stolen vehicle conviction (and several other felony convictions) to misdemeanors.

On December 3, 2018, the trial court denied the petition with respect to some of appellant's convictions, including his 2007 receiving a stolen vehicle conviction.

### **DISCUSSION**

Proposition 47 became effective in November 2014. (*People v. Gutierrez* (2018) 20 Cal.App.5th 847, 854 (*Gutierrez*).) It was designed to reduce the punishment for certain drug- and theft-related offenses. (*Ibid.*) Among other things, Proposition 47 reclassified a variety of grand theft crimes to petty theft offenses when the value of the property taken does not exceed \$950. (*Gutierrez, supra*, 20 Cal.App.5th at p. 854.)

---

<sup>1</sup> Appellant's petition was filed pursuant to Proposition 47, the Safe Neighborhoods and Schools Act (Proposition 47).

<sup>2</sup> All further statutory references are to the Penal Code unless otherwise indicated.

Proposition 47 did not expressly amend the terms of section 496d (the statute under which appellant was convicted in 2007). (*Orozco, supra*, 9 Cal.5th at p. 117.) Section 496d relates to receipt of a stolen vehicle with knowledge it is stolen. (See § 496d, subd. (a).) However, Proposition 47 did amend section 496, subdivision (a), which deals with receipt of stolen property. (*Orozco, supra*, 9 Cal.5th at pp. 116–117.) Following Proposition 47, receiving stolen property worth \$950 or less is now a misdemeanor. (§ 496, subd. (a); *Orozco, supra*, 9 Cal.5th at p. 117.)

Prior to our high court’s recent opinion in *Orozco, supra*, 9 Cal.5th 111, a split of authority had existed in California regarding whether Proposition 47 should extend to section 496d. In our prior opinion, we reviewed that split of authority, and we concluded that Proposition 47 did not apply to section 496d. (*People v. Daly, supra*, F078500.) *Orozco* reached the same conclusion.

*Orozco* holds that “Proposition 47’s amendment to section 496[, subdivision] (a) did not affect convictions for receiving stolen property under section 496d.” (*Orozco, supra*, 9 Cal.5th at p. 123.) The *Orozco* court presumed the Legislature “was aware of section 496d when it approved Proposition 47. Proposition 47 only amended section 496[, subdivision] (a) to reduce receipt of stolen property valued at \$950 or less to a misdemeanor. If the electorate had intended to reclassify section 496d offenses as well, it could have done so in the same way that it did in amending section 496[, subdivision] (a).” (*Orozco, supra*, 9 Cal.5th at p. 118.)

*Orozco* makes it clear that the trial court did not err when it denied appellant’s petition because Proposition 47 did not amend section 496d. Accordingly, we again affirm the court’s order.

### **DISPOSITION**

The order is affirmed.